

IN SENATE OF THE UNITED STATES.

FEBRUARY 19, 1845.

Submitted, and ordered to be printed.

Mr. EVANS made the following

REPORT:

[To accompany bill H. R. 379.]

*The Committee on Finance, to whom was referred a bill from the House of Representatives entitled "An act for the relief of Harvey & Slagg," report:*

That, by existing laws, merchandise of foreign growth or manufacture, imported into the United States, may be re-exported within certain specified periods; and the duties which may have been paid upon their importation shall, in such case, be refunded; and the party exporting the same is entitled to receive the amount of the collector, without the intervention of the Secretary of the Treasury, or any act of Congress for that purpose. But, in order to obtain the drawback of the duty, certain forms of proceedings, essential to the security of the revenue, have been established; and it is only upon a strict compliance with these requisites, that the party is entitled to have the duties restored. In several cases, Congress have passed special acts, authorizing their repayment, where some of the forms had not been observed. In other cases, this relief has been refused; and the Committee of Finance of the last Congress had occasion to express regret, that the strict requirements of the law had in so many instances been departed from, and to recommend, notwithstanding a few precedents to the contrary, that a more rigid adherence to the requirements of the law should hereafter be insisted upon.

The committee then adopted the principle, to which this committee is now disposed to adhere, that, where the failure to comply with the provisions of the act was attributable to the neglect or carelessness of the party seeking relief, Congress ought not to interpose by special enactment in his favor. The general laws are liberal and broad enough to meet all cases; and if a party loses his remedy by his own negligence, he must abide by it. The principles which the committee wish to have firmly established, are contained in two reports submitted to the Senate, February, 1843—one on the petition of Samuel Hoffman, and the other on the petition of Rebecca Guest. (Reports Nos. 211 and 232, 2d session 27th Congress.)

But whenever an exporter of foreign merchandise has done all in his power to comply with the law—has been carefully attentive to his inter-

ests, and urgent to fulfil all the conditions required of him, but, from circumstances beyond his control, some of them have accidentally been omitted, the reason for the principle above asserted does not exist.

An exporter, acting with diligence, and using every effort to comply with the law, ought not to lose his right from the accident or the negligence of other persons, especially of officers of the customs. Such seems to be the present case. On the 4th of November, 1839, Harvey & Slagg were possessed of fourteen cases of merchandise entitled to debenture upon being re-exported from the United States. They duly entered the whole number for re-exportation. The proper custom-house officer required four of the cases to be sent to the public stores for examination. The remaining ten cases were duly inspected in the warehouse of the owners. A permit in due form was granted for the re-exportation of the whole, and, indeed, every requirement of the law was fulfilled, except, that the ten cases were not laden on board ship in the presence of the custom-house officer. The four cases were taken by the officer himself from the public stores to the ship, in the expectation that the ten other cases would be sent by the exporter, and all be laden together in his presence. When he reached the vessel, the master of it refused to receive the four cases on board, alleging that his ship was full. Not then expecting that the ten cases would be received, he left the ship, and took the four cases back to the public stores. Immediately afterwards, the ten cases arrived at the ship, and were left until the proper officer could be sent for to return with the four cases, in order that the whole might be laden in his presence. It being late in the afternoon, the public store was found closed, and the officer could not then be found. To secure the ten cases from injury, the master of the vessel, in the absence of the exporter or his clerk, took the ten cases on board, and stowed them away in the hold of the ship. On the following day, the exporters obtained the presence of the officer with the four cases, which were then laden, and upon which the duties were refunded. The exporters then demanded that the ten cases should be exhibited to the officer, that he might see that they were on board, and be able to certify that they were laden in his presence. The captain and the owners of the ship refused to do this, for the reason that the hatches were then on, and calked down; and, as the ship was about to sail, that it would be attended with great difficulty and delay. The exporters did not acquiesce in this objection, but they had no power to control it. Proof was immediately taken of the fact of lading. The captain and mate both testified to it. The mate's book of cargo on board was exhibited, and the bill of lading, all confirming it. The collector made personal examination, and was entirely satisfied; and the Treasury Department, upon view of the proofs, was also satisfied. Neither of them, however, had authority to grant relief.

Not perceiving that any negligence or fault can be imputed to the exporters, and satisfied that due, even great, diligence was exercised by them, the committee recommend that the bill pass.